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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,668	10/28/2003	Douglas D. Bonke	15197.85USD1	6856
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MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			EXAMINER WOLLSCHLAGER, JEFFREY MICHAEL	
			ART UNIT 1791	PAPER NUMBER
			MAIL DATE 01/07/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/696,668	Applicant(s) BONKE, DOUGLAS D.	
	Examiner Jeff Wollschlager	Art Unit 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-18 is/are rejected.
- 7) ☒ Claim(s) 1-3 and 5-18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/ are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 22, 2007 has been entered.

Response to Amendment

Applicant's amendment to the claims filed October 22, 2007 has been entered. Claims 1, 7 and 8 are currently amended. Claim 4 has been canceled.

Claim Objections

Claims 1-3 and 5-18 are objected to because of the following informalities: At line 3 of claims 2 and 9, the word - - one - - should be inserted between "least of". Claims 13 and 19 refer to weights of the extruded layers. However, the language used is incomplete. For example, "weight first extruded layer" should be rendered - - weight of the first extruded layer - - . Appropriate correction is required. Additionally, the abbreviations "SIS", "HDPE", "LDPE" and "LLDPE" should also be presented in their complete form in the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3, 5-9, 11-14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arvedson et al. (U.S. 5,141,809) in view of McGuire et al. (U.S. 6,602,454) and Dohrer (U.S. 5,085,927) and any one of Chum et al. (U.S. 5,089,321) or Hodgson et al. (U.S. 5,376,439) or DiPoto (U.S. 5,558,930).

Regarding claims 1 and 6-8, Arvedson et al. teach the basic claimed process of making a plastic wrap comprising mixing and extruding a first polyolefin and an antiblocking agent such as silica and talc in a first layer (col. 8, lines 38-col. 9, lines 36); mixing and extruding a base resin of ethylene vinyl acetate/ methyl acrylate (col. 3, lines 48-59; col. 5, lines 62-68) with a tackifier comprising a rosin ester (col. 7, lines 27-60); extruding yet another intermediate layer (col. 9, lines 25-35) and joining/extruding the layers to form a multilayer film (col. 9, lines 35-45). Arvedson et al. also teach chill roll cooling (col. 9, lines 35-45). With respect to claim 8, Arvedson et al. teach forming the film using an air blow extrusion method (i.e. air cooling) (col. 9, lines 35-45). Arvedson et al. do not expressly teach using a set of chill rolls to cool the film and placing the chilled film in contact with an embosser, or that the tackifier further comprises SIS.

However, McGuire teaches using a set of chill rolls to cool the film and placing the chilled film in contact with an embosser (Figure 1) and Dohrer teach the use of SIS as a tackifier in a cling layer (col. 4, lines 10-65).

Therefore it would have been *prima facie* obvious to one having ordinary skill in the art at the time of the claimed invention to have chilled and embossed a film as taught by McGuire in the process of Arvedson et al. since McGuire suggest such means are an equivalent and alternative method of forming an embossed film and to have employed SIS as a tackifier in the cling layer, as taught by Dohrer in the process of Arvedson et al., since Dohrer suggests such styrenic elastomers enhance the effect of the tackifier (col. 4, lines 35-4).

Additionally, Arvedson et al. do not teach that the intermediate layer comprises HDPE. Arvedson et al. do teach and suggest the intermediate layer may be chosen to modify the overall property balance of the film (col. 9, lines 26-30 and 63-68), to provide an outlet for recycled trim and scrap (col. 9, lines 26-31), or to function as a barrier layer (col. 9, lines 26-33) and that the intermediate layer may comprise any other suitable polymer to achieve the desired properties for an intended use (col. 9, lines 26-col. 10, lines 24).

However, Hodgson et al. disclose a method of making a multilayered film where the core layer comprises recycled HDPE (Abstract; col. 9, lines 34-col. 10, lines 22); Chum et al. disclose as conventional employment of HDPE as a core layer for additional structural support (col. 1, lines 24-35); and Dipoto disclose employment of HDPE as a core layer to improve barrier properties (Abstract; col. 2, lines 35-67; col. 3, lines 64-col. 4, lines 67).

Therefore it would have been *prima facie* obvious to one having ordinary skill in the art at the time of the claimed invention to have employed HDPE as the intermediate layer as suggested by any of Hodgson et al., Chum et al. or Dipoto in the method of Arvedson et al. for the purpose, as suggested by Hodgson et al., for environmental stewardship and waste

reduction, or for the purpose of achieving improved strength and barrier properties as suggested by Chum et al. and Dipoto, respectively.

As to claims 2, 9 and 14, Arvedson et al. disclose polypropylene and the antiblocking agent comprises silica or talc (col. 8, lines 38-col. 9, lines 36).

As to claims 3, 11, 12, 16 and 17, Arvedson et al. disclose LLDPE as one of the layers and further disclose using recycle trim, which would comprise LLDPE, in the intermediate layer (col. 9, lines 26-35; col. 8, lines 59-67). Further, Dipoto disclose employment of blends of HDPE and LDPE as the barrier layer (col. 4, lines 44-57).

As to claim 5, the examiner notes the claimed limitations are directed to limiting the sequence of mixing ingredients. However, it has been held that the selection of any order of mixing ingredients is *prima facie* obvious absent new or unexpected results. MPEP 2144.04.

As to claim 13 and 18, Arvedson et al. disclose controlling the thickness/weight of the layers as needed for the intended use (col. 4, lines 58-65; col. 9, lines 46-55). Additionally, DiPoto discloses controlling layer thickness/weight (col. 5, lines 20-35).

Claims 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arvedson et al. (U.S. 5,141,809) in view of McGuire et al. (U.S. 6,602,454) and Dohrer (U.S. 5,085,927) and any one of Chum et al. (U.S. 5,089,321) or Hodgson et al. (U.S. 5,376,439) or DiPoto (U.S. 5,558,930), as applied to claims 1-3, 5-9, 11-14 and 16-18 and further in view of Sishta et al. (U.S. 5,852,143).

As to claims 10 and 15, Arvedson et al. disclose the antiblocking agent comprises silica (col. 9, lines 4-15). Sishta et al. disclose as conventional controlling the particle size of silica antiblocking agents used in films (col. 11, lines 20-31).

Therefore it would have been *prima facie* obvious to one having ordinary skill in the art at the time of the claimed invention to have controlled the particle size of the silica to a "substantially uniform particle size distribution" as suggested by Sishta et al. for the purpose of producing an effective antiblocking agent as is routinely practiced in the art.

Response to Arguments

Applicant's arguments filed October 22, 2007 have been fully considered, but they are not persuasive.

Applicant's initial argument, while outlining the teachings of each reference, essentially argues against the references individually. However, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues that the references are not directed to a plastic film construction that is suitable for food-contacting plastic film. More specifically, applicant points out that the references are directed to films utilized for unitizing pallets and that such films "cannot be made with more than miniscule amounts of HDPE" and that for the reasons outlined in the arguments "HDPE and polypropylene are not used in high amounts in pallet wrap films."

This argument is not persuasive. The examiner notes that Arvedson is not limited to pallet wrapping/unitizing applications. For example, Arvedson also teach that the films may be used for "bundling packaging and unitizing... various foodstuffs (canned or fresh)... and various like goods normally containerized and/or palletized" (col. 10, lines 10—15). It is clear from this teaching that Arvedson does not intend to limit the film to pallet wrap applications. Further, Arvedson teaches wrapping "foodstuffs" including fresh foods. Additionally, Arvedson state that

the films are "well suited for use as stretch/cling films, however this use should not be considered a limitation. For example, these films can be made into other forms, such as a tape" (col. 9, lines 56-61).

Furthermore, Arvedson teaches and suggests the intermediate layer may be chosen to modify the overall property balance of the film (col. 9, lines 26-30 and 63-68), to provide an outlet for recycled trim and scrap (col. 9, lines 26-31), or to function as a barrier layer (col. 9, lines 26-33) and that the intermediate layer may comprise any other suitable polymer to achieve the desired properties for an intended use (col. 9, lines 26-col. 10, lines 24). The applied secondary references employ HDPE to deliver these results that are stated as being desirable by Arvedson. Accordingly, it is submitted that the references themselves provide motivation to employ HDPE as the core/intermediate layer in Arvedson and that while the motivation to employ HDPE in the core layer of Arvedson may be different than applicant's, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff Wollschlager whose telephone number is 571-272-8937. The examiner can normally be reached on Monday - Thursday 7:00 - 4:45, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on 571-272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Jeff Wollschlager
Examiner
Art Unit 1791

January 4, 2008



CHRISTINA JOHNSON
SUPERVISORY PATENT EXAMINER